

CHAPTER 58**(HB 288)**

AN ACT relating to real estate appraisal management companies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context otherwise requires:

- (1) *"Appraisal management company" means a person who performs the actions necessary to administer a network of state-licensed appraisers to fulfill requests for appraisal management services on behalf of a client, including but not limited to the following actions:*
 - (a) *Recruiting appraisers;*
 - (b) *Contracting with appraisers to perform appraisal services;*
 - (c) *Collecting fees from clients;*
 - (d) *Negotiating fees with appraisers or reimbursing appraisers for appraisal services;*
 - (e) *Receiving appraisal orders and appraisal reports;*
 - (f) *Submitting appraisal reports received from appraisers to the company's clients;*
 - (g) *Reviewing or verifying appraisal reports; or*
 - (h) *Managing the process of having an appraisal performed, including providing related administrative and clerical duties;*
- (2) *"Appraisal management services" means conducting business by telephone, by electronic means, by mail, or in person, directly or indirectly for compensation or other pecuniary gain or in the expectation of compensation or other pecuniary gain to:*
 - (a) *Solicit, accept, or offer to accept a request for appraisal services; or*
 - (b) *Employ or contract with a licensed or certified appraiser to perform appraisal services;*
- (3) *"Appraisal services" means the practice of developing an opinion of the value of real estate in conformity with the minimum USPAP standards;*
- (4) *"Appraiser" means an individual licensed by the board who, for a fee or other consideration, develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate in conformity with the minimum USPAP standards;*
- (5) *"Appraiser panel" means a group of independent appraisers who have been selected by an appraisal management company to perform appraisal services for the appraisal management company;*
- (6) *"Board" means the Kentucky Real Estate Appraisers Board established by KRS 324A.015;*
- (7) *"Client" means a person that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of appraisal services;*
- (8) *"Controlling person" means an individual employed, appointed, or authorized by an appraisal management company to contract with clients or independent appraisers for the performance of appraisal services;*
- (9) *"Managing principal" has the same meaning as "controlling person";*
- (10) *"Registrant" means an appraisal management company or person that is registered or seeking registration under Section 2 of this Act; and*
- (11) *"USPAP" means the Uniform Standards of Professional Appraisal Practice.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall not act or offer to act as an appraisal management company or perform appraisal management services within the Commonwealth unless registered by the board.*

- (2) *To be registered by the board, a person shall make written application to the board, submit to a criminal history check as provided in subsection (3) of this section, pay a fee established by the board, and post a surety bond as provided in Section 3 of this Act. The written application shall include the following information:*
- (a) *The name, street address, and telephone contact information of the person seeking registration;*
 - (b) *1. If the registrant is a domestic organization, the designation of an agent for service of process; or*
2. If the registrant is a foreign organization, documentation that the foreign organization is authorized to transact business in the Commonwealth and has appointed an agent for service of process by submitting a copy of:
 - a. The registrant's filing with the Secretary of State appointing an agent for service of process; and*
 - b. A certificate of authority issued by the Secretary of State.*

A foreign organization's failure to comply with this paragraph may result in rejection of the application;
 - (c) *The name, residential street address, and contact information of any person who owns ten percent (10%) or more of the appraisal management company for which registration is being requested;*
 - (d) *The name, residential street address, and contact information of a controlling person or managing principal;*
 - (e) *A certification that the registrant:*
 - 1. Has a system and process in place to verify that any person being added to the appraiser panel of the appraisal management company, or who may be used by the appraisal management company to otherwise perform appraisals, holds a license in good standing in this state under this chapter;*
 - 2. Has a system and process in place to review the work of all appraisers that are performing appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the minimum USPAP standards; and*
 - 3. Maintains a detailed record of each request for appraisal services that it receives and the appraiser that performs the appraisal services for the appraisal management company;*
 - (f) *A certification from the registrant and any partner, member, manager, officer, director, managing principal, controlling person, or person occupying a similar status or performing similar functions, or person directly or indirectly controlling the registrant that:*
 - 1. The application for registration when filed or after filing contains no statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;*
 - 2. The person certifying has not violated or failed to comply with Section 3, 4, or 5 of this Act;*
 - 3. The person certifying and each person who owns ten percent (10%) or more of the registrant has not pled guilty or nolo contendere to or been found guilty of:*
 - a. A felony; or*
 - b. Within the past ten (10) years, a misdemeanor involving mortgage lending or real estate appraising, or an offense involving breach of trust or fraudulent or dishonest dealing;*
 - 4. The person certifying is not permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;*
 - 5. The person certifying is not the subject of an order of the board or any other state's appraisal management company regulatory agency denying, suspending, or revoking the person's privilege to operate as an appraisal management company; and*

- 6. *The person certifying has not acted as an appraisal management company while not properly registered by the board; and*
- (g) *Any other information required by the board.*
- (3) *The board shall require a national and state criminal background check on the person certifying under subsection (2)(f) of this section and each person who owns ten percent (10%) or more of the registrant under the following requirements:*
 - (a) *The person certifying and each person who owns ten percent (10%) or more of the registrant shall provide his or her fingerprints to the Department of Kentucky State Police for submission to the Federal Bureau of Investigation after a state criminal background check is conducted;*
 - (b) *The results of the national and state criminal background check shall be sent to the board; and*
 - (c) *Any fee charged by the Department of Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the check.*
- (4) *The board shall issue a certificate of registration to a registrant authorizing the registrant to act or offer to act as an appraisal management company in this state upon:*
 - (a) *Receipt of a properly completed application;*
 - (b) *Payment of the required fee;*
 - (c) *Posting of the required bond; and*
 - (d) *A determination by the board that:*
 - 1. *The registrant has not had a previous registration suspended or revoked; and*
 - 2. *The activities of the applicant shall be directed and conducted by persons who:*
 - a. *Have not had a previous registration suspended or revoked;*
 - b. *Have not pled guilty or nolo contendere to or been found guilty of a felony; or*
 - c. *Within the past ten (10) years have not pled guilty, pled nolo contendere to, or been found guilty of a misdemeanor involving mortgage lending or real estate appraising or an offense involving a breach of trust or fraudulent or dishonest dealing.*
- (5) (a) *If the board finds that there is substantial reason to deny the application for registration, the board shall notify the registrant that the application has been denied and shall afford the registrant an opportunity for a hearing before the board to show cause why the registration should not be denied.*
- (b) *All proceedings concerning the denial of a certificate of registration shall be conducted in accordance with KRS Chapter 13B.*
- (c) *The acceptance by the board of an application for registration does not constitute the approval of its contents or waive the authority of the board to take disciplinary action under Section 7 of this Act.*
- (6) (a) *Registrations issued under this section shall be renewed annually.*
- (b) *Renewal shall occur on October 31 of each year.*
- (c) *If the initial registration occurs less than six (6) months before October 31, the renewal shall not be required until October 31 of the following year, and shall then be renewed on October 31 of each year thereafter.*
- (7) (a) *Failure to renew a registration in a timely manner shall result in a loss of authority to operate.*
- (b) *A request to reinstate a certificate of registration shall be accompanied by payment of a penalty of fifty dollars (\$50) for each month of delinquency, up to six (6) months after expiration.*
- (c) *After six (6) months' delinquency, a new application for registration shall be required.*
- (8) *The board shall promulgate administrative regulations to establish standards for the operation of appraisal management companies and for the implementation and enforcement of Sections 1 to 8 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations establishing a reasonable filing fee to be paid by each appraisal management company seeking registration under Section 2 of this Act. The filing fee shall include the annual fee for inclusion in the national registry maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.*
- (2) *In addition to the filing fee, each applicant for registration shall post and maintain a surety bond with the board. The surety bond shall:*
 - (a) *Be established by the board through administrative regulation but shall not exceed five hundred thousand dollars (\$500,000);*
 - (b) *Be in the form prescribed by the board; and*
 - (c) *Accrue to the state for the benefit of any claimant against the registrant to secure the faithful performance of the registrant's obligations.*

The aggregate liability of the surety bond shall not exceed the principal sum of the surety bond.
- (3) *A party having a claim against the registrant may bring suit directly against the surety bond, or the board may bring suit on behalf of the party having a claim against the registrant.*
- (4) *Consumer claims shall be given priority in recovering from the surety bond.*
- (5) *If a claim reduces the face amount of the bond, the bond amount shall be annually restored upon renewal of the registrant's registration.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *A registrant that is an organization shall:*
 - (a) *Maintain a registered agent for service of process; and*
 - (b) *Provide to the board the information required by the Secretary of State concerning the organization's agent for service of process. If changes are made to the information required by the Secretary of State, the changes shall be provided to the board within five (5) business days.*
- (2) *A registrant shall maintain, or cause to be maintained, complete records of requests for appraisal services referred to an appraiser licensed or certified by the board, including without limitation records pertaining to the acceptance of fees from clients and payments to appraisers. The board may inspect records, without prior notice, periodically, or if the board determines that the records are pertinent to an investigation of a complaint against a registrant.*
- (3) *A registrant shall designate a controlling person or managing principal responsible for ensuring compliance with this section.*
- (4) *(a) The registrant shall file a form with the board:*
 1. *Documenting the identity of the person designated as the controlling person or managing principal; and*
 2. *Certifying the individual's acceptance of the responsibility of a controlling person or managing principal.*
 - (b) *The registrant shall submit a new form to the board within five (5) business days after a change in its controlling person or managing principal.*
 - (c) *An individual registrant who operates as a sole proprietorship is deemed the managing principal under this section.*
- (5) *A registrant shall make and keep its accounts, correspondence, memoranda, papers, books, and other records in accordance with administrative regulations promulgated by the board. All records shall be retained for five (5) years unless the board establishes a different, longer retention period for particular types of records.*
- (6) *The registrant shall disclose, on all invoices, purchase orders, or other documents establishing work to be performed for or compensation due from its clients, itemized actual fees paid to any third party for services performed, including appraisal services, for the client through contract with or arrangement through the registrant. The disclosure shall include:*

- (a) *The name of the third party performing the service, including a licensed appraiser performing appraisal services;*
- (b) *The nature of the service and itemized fees paid to the third party for appraisal services or any other services performed; and*
- (c) *Itemized fees or charges received by the registrant for appraisal management services.*

If the disclosure made becomes inaccurate because of changes to services requested or performed, a revised or amended disclosure shall be provided by the end of the next business day after the change to services has been performed, and the revised or amended disclosure shall be clearly marked as revised or amended and contain sufficient information for the client to identify the original disclosure referenced.

- (7) *The provisions of this section do not exempt the registrant from any other reporting requirements contained within any federal or state law.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *An employee, director, officer, or agent of an appraisal management company or any other third party acting as a joint venture partner with or as an independent contractor for an appraisal management company shall not improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal, including but not limited to the use of intimidation, coercion, extortion, bribery, blackmail, threat of nonpayment or withholding payment for appraisal services, or threat of exclusion from future appraisal work.*
- (2) *The registrant shall not:*
 - (a) *Request, allow, or require an appraiser to collect any portion of the fee charged by the appraisal management company, including the appraisal fee, from a borrower, homeowner, or other third party;*
 - (b) *Require an appraiser to provide the registrant with the appraiser's digital signature or seal;*
 - (c) *Alter, amend, or change an appraisal report submitted by a licensed or certified appraiser, by the following or any other actions:*
 - 1. *Removing the appraiser's signature;*
 - 2. *Adding or removing information to or from the appraisal report; or*
 - 3. *Altering the final value opinion reported by an appraiser;*
 - (d) *Remove an appraiser from an appraiser panel without prior written notice to the appraiser. An appraiser may only be removed from an appraiser panel with written notice for:*
 - 1. *A violation of the minimum USPAP standards or other applicable statutes or administrative regulations resulting in a suspension or revocation of the appraiser's license in Kentucky; or*
 - 2. *Other substandard or otherwise improper performance as may be determined by administrative regulations promulgated by the board;*
 - (e) *Enter into contracts or agreements with an appraiser for the performance of appraisal services unless the appraiser is licensed or certified in good standing with the board;*
 - (f) *Request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser completes an appraisal report;*
 - (g) *Provide to an appraiser an anticipated, estimated, encouraged, or desired value for a property or a proposed or target amount to be loaned or borrowed, except that a copy of the sales contract for purchase transactions may be provided;*
 - (h) *Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality; or*
 - (i) *Have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.*
- (3) *Subsection (1) of this section shall not prohibit an appraisal management company from requesting that an appraiser:*

- (a) *Provide additional information about the basis for a valuation;*
- (b) *Correct objective factual errors in an appraisal report; or*
- (c) *Provide further detail, substantiation, or explanation for the appraiser's value conclusion.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director of the board shall keep a register of all applicants for registration which shall include:*
 - (a) *The date of the application;*
 - (b) *The applicant's name;*
 - (c) *The applicant's business address; and*
 - (d) *The current status of the registration.*
- (2) *The register shall be prima facie evidence of all matters contained in the register.*
- (3) *The register shall be kept on file in the office of the board and shall be open for public inspection in accordance with KRS 61.870 to 61.884.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *The board may deny, suspend, revoke, or refuse to issue or renew the registration of an appraisal management company, or may restrict or limit the activities of an appraisal management company or of a person who owns an interest in or participates in the business of an appraisal management company if the board finds that any of the following circumstances apply to the applicant, a registrant, a person owning ten percent (10%) or more of the applicant or registrant, a partner, member, manager, officer, director, managing principal, controlling person, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant or registrant:*
 - (a) *The application for registration contained a statement that in light of the circumstances under which it was made is false or misleading with respect to a material fact;*
 - (b) *The person has violated or failed to comply with Section 2, 3, 4, or 5 of this Act or failed to comply with administrative regulations promulgated by the board for the implementation and enforcement of Sections 1 to 8 of this Act;*
 - (c) *The person has pled guilty or nolo contendere to or has been found guilty of a felony or, within the past ten (10) years, a misdemeanor involving mortgage lending or real estate appraising or an offense involving a breach of trust or fraudulent or dishonest dealing;*
 - (d) *The person is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;*
 - (e) *The person is the subject of an order of the board or any other state's appraisal management company regulatory agency denying, suspending, or revoking the person's privilege to operate as an appraisal management company;*
 - (f) *The person acted as an appraisal management company while not properly registered by the board; or*
 - (g) *The person failed to pay the proper filing or renewal fee as provided under Sections 2 and 3 of this Act.*
- (2) *Upon its own motion or the written complaint of a person reporting a violation of subsection (1) of this section, and after notice and the opportunity for a hearing in accordance with KRS Chapter 13B, the board may:*
 - (a) *Suspend or revoke the registration of a registrant;*
 - (b) *Impose a fine not to exceed five thousand dollars (\$5,000) per violation; or*
 - (c) *Take other appropriate disciplinary actions as established by the board through promulgation of administrative regulations.*

- (3) *The board may appear in its own name in Franklin Circuit Court, or the Circuit Court of the county where the alleged violation occurred, to obtain injunctive relief to prevent a person from violating Section 3, 4, 5, or 7 of this Act. The Circuit Court may grant a temporary or permanent injunction regardless of whether:*
- (a) *Criminal prosecution has been or may be instituted as a result of the violation; or*
 - (b) *The person is the holder of a registration issued by the board.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

Unless otherwise required to be registered as an appraisal management company, by state or federal law Sections 1 to 8 of this Act shall not apply to:

- (1) *The federal government, state government, any county or municipal government, or any agency or instrumentality thereof;*
- (2) *A person authorized to engage in business as, or as a subsidiary of, a bank, credit union, or savings and loan association under the laws of the United States, the Commonwealth of Kentucky, or any other state;*
- (3) *A real estate broker or real estate agent properly licensed or otherwise authorized to do business in the Commonwealth of Kentucky;*
- (4) *An officer or employee of any entity listed in subsection (1), (2), or (3) of this section when acting within the scope of his or her employment;*
- (5) *An entity that is responsible for ensuring that the real estate appraisal activity being performed by an employee is performed in accordance with applicable appraisal standards;*
- (6) *An individual who:*
 - (a) *Is an appraiser; and*
 - (b) *In the normal course of business enters into an agreement, whether written or otherwise, with another appraiser for the performance of a real estate appraisal activity that the individual cannot complete for any reason, including:*
 - 1. *Competency;*
 - 2. *Workload;*
 - 3. *Schedule; or*
 - 4. *Geographic location;*
- (7) *An individual who:*
 - (a) *In the normal course of business enters into an agreement, whether written or otherwise, with an appraiser for the performance of real estate appraisal activity; and*
 - (b) *Under the agreement cosigns the report of the appraiser performing the real estate appraisal upon completion of the real estate appraisal activity; or*
- (8) *An appraisal management company that contracts with one (1) or more appraisers for the performance of fewer than ten (10) appraisals in this state in a calendar year.*

➔Section 9. This Act shall be known as the Kentucky Appraisal Management Company Registration Act.

Signed by Governor March 16, 2011.